

## Title 25. HEALTH SERVICES

### Part I. TEXAS DEPARTMENT OF HEALTH

#### Chapter 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

##### Subchapter B. DATA COLLECTION

§13.11. Purpose. The purpose of the sections in this chapter is to implement Health and Safety Code, Chapter 104, Subchapter D, which requires the department to adopt rules covering the collection of data from health care facilities, such as hospitals, and the dissemination of data to facilitate health planning and resource development; Health and Safety Code, Chapter 311, Subchapters C and D relating to the collection and reporting of hospital financial and utilization data including data regarding the provision of levels of charity care by certain nonprofit hospitals, and the submission of an annual report of a community benefits plan by certain nonprofit hospitals.

§13.12. Scope. The scope of these sections is to describe the criteria and procedures which the department will use in implementing data collection, dissemination, and reporting requirements. These sections will cover the collection and dissemination of data from the public or private hospitals that are included in the definition of the term "health care facilities" in the Health and Safety Code, Chapter 104, Subchapter A. The remaining entities included in the definition of the term "health care facilities" are not covered by these sections. If data covered by these sections will be collected from a public or private hospital that is a general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; or a treatment facility licensed under the Health and Safety Code, Chapter 464, the data will be collected under authority of and in compliance with the requirements of the Health and Safety Code, Chapters 104 and 311.

§13.13. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Texas Board of Health.

(2) Chapter 104--Provisions relating to the data collection responsibilities of the Texas Department of Health as the state health planning and development agency found within the Health and Safety Code, Title 2.

(3) Chapter 311--Provisions relating to the powers and duties of hospitals found within the Health and Safety Code, Title 4.

(4) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent and/or providing, funding or otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient

clinics, hospitals or health care organizations.

(5) Community benefits--The unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits do not include the cost to the hospital of paying any taxes or other governmental assessments.

(6) Department--The Texas Department of Health.

(7) Donations--The unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(8) Education-related cost--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including education of medical professionals and health care providers; scholarships and funding to medical schools, colleges, and universities for health professions education; education of patients concerning diseases and home care in response to community needs; and community health education through informational programs, publications, and outreach activities in response to community needs.

(9) Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(10) Government sponsored indigent health care--The unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(11) Government-sponsored program unreimbursed costs--The unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(12) Health care facility--Regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

(13) Health care organization--A nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(14) Hospital--A general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; and a

treatment facility licensed under the Health and Safety Code, Chapter 464.

(15) Hospital Data Advisory Committee--An advisory group, appointed by the board, which assists the department in carrying out its responsibilities under Health and Safety Code, Chapter 311.

(16) Hospital eligibility system--The financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under § 61.023 or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(17) Hospital system--A system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(18) Medically indigent--A person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(19) Net patient revenue--An accounting term that shall be calculated in accordance with generally accepted accounting principles for hospitals.

(20) Nonprofit hospital--

(A) A hospital that is organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country and is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes. For purposes of determining whether a hospital is "organized" as a nonprofit corporation or charitable trust, the department will look at the entity which holds the hospital license issued by the department; that is the entity which must be organized as a nonprofit corporation or charitable trust.

(B) A "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including, but not limited to, the patient or any person legally obligated to support the patient, third-party payers, Medicare, Medicaid, or any other federal, state, or

local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services.

(C) A “nonprofit hospital” does not include a hospital that is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a health professional shortage area. A “nonprofit hospital” includes a hospital that is located in a county with a population under 50,000 population where only a subpopulation, partial geographic area or a facility is designated as a health professional shortage area.

(21) Patient data--Information derived from individual, acute care, inpatient, and outpatient discharge abstract records.

(22) Subsidized health services--Services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services include, but are not limited to, emergency and trauma care, neonatal intensive care, freestanding community clinics, and collaborative efforts with local government or private agencies in preventive medicine.

(23) Survey--The annual data collection effort conducted by the department to implement the provisions of Health and Safety Code, Chapters 104 and 311.

(24) Tax exempt benefits--All of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(25) Unreimbursed costs--The costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term

"costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. For purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

§13.14. Types of Data To Be Reported. The types of data which hospitals must report to the Texas Department of Health (department) are as follows:

(1) reporting period data reflecting the 12-month period covering the hospital's most recently completed fiscal year;

(2) organizational structure data reflecting the organization that is responsible for establishing policy for the overall operation of the hospital; the organization that owns the hospital's physical plant; the organization's affiliation with the hospital and any hospital systems of which the hospital is a part; and the type of service provided to the majority of admissions;

(3) financial data about a facility's revenues and expenses. Financial data is based on the American Institute of Certified Public Accountants Hospital Audit Guide and on generally accepted accounting principles for hospitals and is extracted from the hospital's most recent annual financial statements as follows:

(A) total gross revenue, including Medicare and Medicaid gross revenue, other revenue from state programs, revenue from local government programs, local tax support, charitable contributions, other third party payments, gross inpatient revenue and gross outpatient revenue;

(B) total deductions from gross revenue, including contractual allowances and any other deductions;

(C) net patient revenue;

(D) charity care;

(E) bad debt expense; and

(F) total assets and liabilities;

(4) utilization data about the use of a facility and/or its services, including:

(A) total admissions, including Medicare admissions and Medicaid admissions, admissions under a local government program, charity care admissions, and any other type of admission;

- (B) total discharges;
- (C) total patient days;
- (D) average length of stay; and
- (E) total outpatient visits; and

(5) additional data as follows:

(A) estimates of unreimbursed costs of subsidized health services reported separately as emergency and trauma care, neonatal intensive care, freestanding community clinics, collaborative efforts with local government or private agencies in preventive medicine, and other subsidized health services;

(B) donations;

(C) total cost of reimbursed and unreimbursed research; and

(D) total cost of reimbursed and unreimbursed education separated into the following categories: education of physicians, nurses, technicians, and other medical professionals and health care providers; scholarships and funding to medical schools, colleges, and universities for health professions education; education of patients concerning diseases and home care in response to community needs; community health education through informational programs, publications, and outreach activities in response to community needs; and other educational services that satisfy the definition of "education-related costs" under Health and Safety Code, §311.031(6).

#### §13.15. Survey Forms and Methods of Reporting Data.

(a) The hospital shall use the survey form specified by the Texas Department of Health (department) for reporting purposes. The department shall provide a hard copy or electronic survey form, including instructions for reporting electronically and on paper, to each hospital on an annual basis.

(b) The hospitals shall complete all requested sections on the survey form and return it electronically or in paper form by regular mail to the department within 60 days of receipt. The hospitals shall report data for the hospitals' most recently completed fiscal year. A copy of the hospital's eligibility system and any other information requested shall be submitted to the department by regular mail.

(c) The department may request missing or incomplete data by written or telephone request. Hospitals shall complete all requested follow-up in the time frame specified by the department.

(d) A hospital may, but is not required to, provide the data required by subsection (b) of this

section if the hospital:

- (1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and
- (2) does not seek or receive reimbursement for providing health care services to patients from any source, including:
  - (A) the patient or any person legally obligated to support the patient;
  - (B) a third party payor; or
  - (C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

§13.16. Verification Report. The department shall send each reporting hospital a copy of its data verification report prior to the publication of the results of the survey. The hospital shall review the contents of the computer generated report. If modifications to the report are necessary, the appropriate changes shall be made on the report, and the hospital administrator shall sign and return the report to the department within 31 days of receipt. If no changes are reported within 31 days, the department shall consider the hospital's report verified.

§13.17. Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311.

- (a) Annual report of the community benefits plan.
  - (1) The annual report of the community benefits plan may be filed with the department on a hospital or hospital system basis.
  - (2) A nonprofit hospital or hospital system shall file an annual report of the community benefits plan with the department no later than April 30 of the following year.
  - (3) The nonprofit hospital's or hospital system's annual report of the community benefits plan must include, at a minimum:
    - (A) the hospital's or hospital system's mission statement;
    - (B) a disclosure of the health care needs of the community that were considered in developing the community benefits plan;
    - (C) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;

(D) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and

(E) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in subparagraph (D) of this paragraph and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 “Annual Statement of Community Benefits Standard”.

(4) In addition to the annual report of the community benefits plan, a nonprofit hospital or hospital system shall file a completed worksheet as required by paragraph (3)(E) of this subsection no later than ten working days after the date the hospital or hospital system files its Medicare cost report.

(b) Annual statement of community benefits standard.

(1) The annual statement of community benefits standard may be filed with the department on a hospital or hospital system basis.

(2) A nonprofit hospital or hospital system is required to file an annual statement with the department no later than 120 days after the hospital’s or hospital system’s fiscal year ends; however, the department will accept the annual statement as part of the acceptance of the annual report of the community benefits plan. The annual statement filed under this subsection shall be based on the most recently completed and audited prior fiscal year of the hospital and shall state which of the standards for providing community benefits has been satisfied. A nonprofit hospital or hospital system may elect to provide community benefits according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system, and other factors that may be unique to the hospital or hospital system, such as the hospital’s or hospital system’s volume of Medicare and Medicaid patients;

(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100% of the hospital’s or hospital system’s tax-exempt benefits, excluding federal income tax; or

(C) charity care and community benefits are provided in a combined amount equal to at least 5.0% of the hospital’s or hospital system’s net patient revenue, provided that charity care and government sponsored indigent health care are provided in an amount equal to at least 4.0% of net patient revenue.

(3) For purposes of satisfying paragraph (2)(C) of this subsection, a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or



corporate structure as a result of a sale or merger.

(4) A nonprofit hospital or hospital system shall use the annual statement of community benefits standard form and accompanying worksheets developed by the department for reporting under this section. Hospitals electing to report on a system basis shall consolidate the individual hospital information into a single annual statement of community benefits standard form for the system. A separate set of worksheets shall be completed for each individual hospital included in the system.request. Nonprofit hospitals or hospital systems shall complete all requested follow up in the time frame specified by the department.

(7) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be deemed in compliance with these standards.

(8) A hospital that satisfies paragraphs (2)(A) or (6) of this subsection shall be excluded in determining a hospital system's compliance with the standards provided in paragraphs (2)(B) and (C) of this subsection.

(9) Under the Tax Code, §171.063(a)(4), a requirement that a nonprofit hospital provide charity care and community benefits in order to be exempt from franchise tax may be satisfied by a donation of money to the Texas Healthy Kids Corporation established by the Health and Safety Code, Chapter 109, provided that:

(A) the money is donated to be used for a purpose described by the Health and Safety Code, §109.033(c); and

(B) not more than 10% of the charity care required under any provision of the Tax Code, §171.063(a), may be satisfied by the donation.

(c) Reporting.

(1) The department shall notify nonprofit hospitals in writing that the annual report of a community benefits plan and the statement of community benefits standard must be filed in accordance with these rules.

(2) Nonprofit hospitals changing to a hospital system reporting basis shall report for a continuous period of time.

(3) All hospitals or hospital systems shall report as required under this title if the hospital or hospital system, for the previous fiscal year, reported as a nonprofit hospital or hospital system under §13.15 of this title (relating to Survey Forms and Methods of Reporting Data).

(4) All hospitals or hospital systems shall report any change of ownership which may

affect the nonprofit status of the hospital or hospital system to the Office of Policy and Planning, formerly known as the Bureau of State Health Data and Policy Analysis, at the department within 60 days of the effective date of the change.

(5) Each nonprofit hospital or hospital system shall report the following information to the department:

(A) the hospital's mission statement;

(B) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to §311.044(b) of Chapter 311;

(C) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;

(D) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital;

(E) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in subparagraph (D) of this paragraph and that included the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standards";

(F) the amount of charity care provided;

(G) the amount of government-sponsored indigent health care provided;

(H) the amount of community benefits provided;

(I) the amount of net patient revenue and the amount constituting 4.0% of net patient revenue;

(J) the dollar amount of the hospital's or hospital system's charity care and community benefits requirements met;

(K) the amount of tax-exempt benefits provided, if the hospital is required to report tax-exempt benefits under subsection (b)(2)(A) or (B) of this section; and

(L) the amount of charity care expenses reported in the hospital's or hospital system's audited financial statement.

(d) Posting of sign. Nonprofit hospitals shall prepare a statement notifying the public that the annual report of the community benefits plan is public information, that it is filed with the department, and that it is available on request from the Office of Policy and Planning, formerly known as the Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. The statement must indicate the report's availability date and be posted in prominent places throughout the hospital, including, but not limited to, the waiting areas of the emergency room and the admissions office. Nonprofit hospitals shall also print the statement in the patient guide or other materials that provide the patient with information about the hospital's admissions criteria.

(e) Charity care notice. Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program.

(f) Exemptions. A nonprofit hospital is exempt from the reporting requirement in subsection (c) of this section if the hospital is located in a county with a population under 50,000 and in which the entire county or the population of the entire county has been designated as a "health professional shortage area" during the current or any previous fiscal year and has continued to maintain that designation.

(g) For purposes of this section only, a nonprofit hospital shall include a nonprofit hospital as defined in §13.13 of this title (relating to Definitions) and:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision of municipal corporation of the state, including a hospital district or authority.

#### §13.18. Noncompliance with Reporting Requirements.

(a) Data reporting.

(1) If a hospital does not submit a completed survey form to the Texas Department of Health (department) within the 60-day reporting period established in §13.15 of this title (relating to Survey Forms and Methods of Reporting Data), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 104. The written notification will also state that the commissioner of health may request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital fails to submit the requested data to the department within 30 days of the date the entity received the notification letter.

(B) If the department does not receive the requested data from the non-responding hospital within the specified time frame, the commissioner of health may notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital.

(2) A hospital that does not timely submit requested data to the department according to the requirements and procedures established in these sections is subject to a civil penalty of not more than \$500 for each day of noncompliance, under the provisions of Health and Safety Code, Chapter 104.

(b) Community benefit plans.

(1) A nonprofit hospital or hospital system that does not timely submit a report of the community benefits plan to the Texas Department of Health (department) according to the requirements and procedures established in these sections is subject to a civil penalty of not more than \$1,000 for each day of noncompliance, under the provisions of Health and Safety Code, Chapter 311.

(2) If a nonprofit hospital or hospital system does not submit a report of the community benefits plan to the department within the reporting period established in §13.17 of this title (relating to Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 311. The written notification will also state that the commissioner of health may request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital or hospital system fails to submit the report to the department within ten days after receipt of the written notification letter.

(B) If the department does not receive the report of the community benefits plan from the non-responding hospital or hospital system within the specified time frame, the commissioner of health may notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital or hospital system.

#### §13.19. Confidential Data.

(a) The following data received by the Texas Department of Health (department) from a hospital is confidential under authority of the Health and Safety Code, Chapters 104 and 311:

(1) information relating to a specific patient; and

(2) financial information relating to a provider or hospital that was submitted prior to September 1, 1987. All financial data regarding a provider or facility submitted after September 1, 1987, are no longer confidential.

(b) The department will establish appropriate internal controls to maintain confidentiality of patient level data.

(c) The department will disclose confidential patient information to a third party only upon receipt of appropriate written consent of the patient.

§13.20. Open Records Request Procedures.

(a) The Texas Department of Health (department) will provide non-confidential information upon receipt of written request and payment for the cost of copies as determined by the department and the General Services Commission.

(b) Individuals may review non-confidential information on the department's premises during normal business hours by scheduling an appointment at least one day in advance of the desired review. Individuals must complete their review of the information within 10 days or submit a written request to the department to obtain additional time to review the information.

(c) The department will notify the requester in writing if the requested information is unavailable at the time of the request and establish a date within a reasonable period of time in which the information will be available for inspection or duplication.